

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2006-96-T - ORDER NO. 2006-693

NOVEMBER 15, 2006

IN RE: Application of Atkins/Masters Moving and	)	ORDER APPROVING
Storage, Inc, 1523 Antioch Church Road,	)	TRANSFER OF CLASS E
Greenville, South Carolina 29605 (District 4)	)	CERTIFICATE
for a Transfer of Class E Certificate of Public	)	
Convenience and Necessity No. 567-G to	)	
Blue Star International Moving & Storage,	)	
LP.	)	

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Application of Atkins/Masters Moving and Storage, Inc., 1523 Antioch Church Rd., Greenville, South Carolina 29605 ("Atkins/Masters" or "Transferor") to transfer Class E Certificate of Public Convenience and Necessity ("Class E Certificate of PC&N") No. 567-G to Blue Star International Moving & Storage, LP ("Blue Star" or "Transferee"). Class E Certificate of PC&N No. 567-G provides authority to transport household goods as follows:

HOUSEHOLD GOODS, as defined in R. 103-210(1):  
Between points and places in Greenville County, and  
between points and places in Greenville County and points  
and places in South Carolina.

By the Application, Atkins/Masters seeks to transfer, and Blue Star seeks to obtain, Class E Certificate of PC&N No. 567-G. Included in the Application is documentation from Atkins/Masters, as Transferor, as required by 26 S.C. Code Ann. Regs. 103-135 and

documentation from Blue Star, as Transferee, attesting to it being fit, willing, and able to perform the services under the certificate.

Subsequent to the filing of the Application, the Commission's Docketing Department instructed Atkins/Masters to publish a Notice of Filing in a newspaper of general circulation in the area affected by the Application. The Notice of Filing provided details of the Application and provided information advising interested parties of the manner and time in which to file pleadings to become involved in the proceedings concerning the Application. No Petitions to Intervene or letters of protest were filed regarding the Application.

A hearing on Atkins/Master's Application was held on August 24, 2006, at 3:00 P.M. in the hearing room at the offices of the Commission. The Honorable G. O'Neal Hamilton, Chairman, presided at the hearing. Blue Star was represented by John J. Pringle, Jr. and Benjamin A. Traywick. The Office of Regulatory Staff was represented by Wendy Cartledge.

Rupert Kugler and Ronald Ewart testified on behalf of the Applicant. L. George Parker, Jr. and Patty Vowell testified on behalf of the Office of Regulatory Staff.

#### **APPLICABLE LAW**

1. S.C. Code Ann. § 58-23-340 (Supp. 2005) provides:

Notwithstanding custom or usage or any regulation, or other provision of law, it is unlawful for any person to sell, lease, or otherwise transfer a certificate of public convenience and necessity issued or authorized to be issued after July 1, 1983, under the provisions of Chapter 23 of Title 58 for money, goods, services, or any other thing of value. A certificate may be transferred incident to the sale

or lease of property or assets owned or used by a regulated motor carrier, provided the approval of the Commission for the transfer of the certificate is first obtained and that the certificate itself is not transferred for value or utilized to enhance the value of other property transferred. Nothing herein shall effect the sale, lease or otherwise transfer of a certificate of public convenience and necessity issued prior to July 1, 1983.

2. 26 S.C. Code Ann. Regs. 103-102(1) (Supp. 2005) defines “Certificate of PC&N” as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

3. 26 S.C. Code Ann. Regs. 103-102(14) (Supp. 2005) defines “Common Carrier by Motor Vehicle” as “any person<sup>[1]</sup> which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976.”

4. A “Class E Motor Carrier” is defined in 26 S.C. Code Ann. Regs. 103-114 (Supp. 2005) as “a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a

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<sup>[1]</sup> 26 S.C. Code Ann. Code Regs. 103-102(15) defines “person” as “any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.”

packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.”

5. 26 S.C. Code Ann. Regs. 103-135 (Supp. 2005) is entitled “Sale, Lease or Other Transfer of a Certificate of PC&N or FWA” and provides in relevant part as follows:

1. Application Required. Application for approval of sale, lease or other transfer of a Certificate of PC&N or FWA shall be filed with the Commission on forms provided by the Commission. No application is deemed filed until all the required information is completed and all the appropriate signatures obtained.

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3. Application to Sell or Otherwise Transfer a Certificate of PC&N.

- a. If the application is for approval of a sale or other transfer of a certificate, a copy of the proposed sales or other transfer agreement must be filed with the application and must contain the entire agreement between the parties, including (1) an accurate description of the operating rights and other property to be transferred, and (2) the purchase price agreed upon and all the terms and conditions with respect to the payment of the same.
- b. No sale or other transfer of a Certificate of PC&N shall be approved by the Commission until the transferor (seller) has filed with the Commission a statement under oath showing (1) all assets of the holder of the certificate to be sold, (2) all debts and claims against the transferor (seller) of which such seller has any knowledge or notice, (3) wages due employees of the transferor (seller), (4) unremitted COD collections due shippers, (5) claims for loss of or damage to goods transported or received for transportation, (6) claims for overcharges on property transported or received for transportation, and (7) interline accounts due other carriers. There also shall be filed with the

Commission a verified statement from the transferee (purchaser) or an authorized agent or officer thereof, guaranteeing the payment of all just obligations as listed in the sworn statement of the seller. This subsection shall not be applicable to sales by personal representatives of deceased or incompetent persons, receivers, or trustees in bankruptcy under court order.

4. Proof Required. The Commission shall approve an application for lease, sale, or other transfer of a Certificate of PC&N made under this section upon finding (1) that the sale, assignment, pledge, transfer, change of control, lease, merger, or combination thereof will not adversely affect the service to the public under said certificate, (2) that the person acquiring said certificate or control thereof is fit, willing, and able to perform such service to the public under said certificate, and (3) that all services under said certificate have been continuously offered and reasonably provided to the public for a period of time not less than twelve months prior to the date of the filing of the application for approval of the sale, lease or transfer of said certificate, or, in lieu thereof, that any suspension of service exceeding thirty (30) days shall have been approved by the Commission, seasonal suspensions excepted. No sale, lease, transfer, assignment, or hypothecation of a Certificate of PC&N will be approved where such action would be destructive of competition or would create an unlawful monopoly.

If the application does not contain evidence that the authorized services have been continuously offered and reasonably provided to the public for a period of time not less than twelve (12) months prior to the date of the filing of the application, the application may be denied.

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6. It is unlawful for any person to sell, lease, or otherwise transfer a Certificate of PC&N issued or authorized to be issued after July 1, 1983, under the provisions of Chapter 23 of Title 58 for money, goods, services, or any other thing of value. A certificate may be transferred incident to the sale or lease of property or assets owned or used by a regulated motor carrier, provided that approval of the Commission for the transfer of the certificate is first obtained and that the

certificate itself is not transferred for value or utilized to enhance the value of other property transferred. Nothing herein shall affect the sale, lease, or otherwise transfer of a certificate of public convenience and necessity issued prior to July 1, 1983.

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6. 26 S.C. Code Ann. Code Regs 103-133 (Supp. 2005) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to be appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.<sup>[2]</sup> If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant’s safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.P.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.

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<sup>2</sup> As the instant case concerns the transfer of certificate and not the issuance of a new certificate, the question of public convenience and necessity is not at issue in this case. Thus there is no need for shipper witnesses to be presented.

- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

7. 26 S.C. Code Ann. Code Regs. 103-134 (Supp. 2005) is entitled "When Hearing May Be Held" and provides in relevant part that "[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served."

### **EVIDENCE OF RECORD**

Rupert Kugler, the owner and President of Blue Star, appeared and offered testimony in support of the Application. Mr. Kugler stated that in February, 2004, Blue Star entered into an agreement with Atkins/Masters under which Blue Star agreed to purchase the assets of Atkins/Masters for a sum of sixty-thousand dollars (\$60,000.00). Atkins/Masters now seeks to transfer its Certificate of Public Convenience and Necessity to Blue Star. Because Blue Star has been providing moving services since the asset

transfer on February 23, 2004, Blue Star seeks to have the transfer granted *nunc pro tunc*, and therefore retroactively to February 23, 2004.

*Nunc pro tunc* approval of a transfer application is extraordinary, but warranted in this case. Mr. Kugler's undisputed testimony indicates that he at all times acted in good faith in his efforts to follow all Commission rules and regulations of which he was aware, but that he was led to believe that the asset transfer by way of which he purchased the Company effectively transferred the Company's Certificate as well. The Commission has heard the testimony of the witnesses detailing the applicant's efforts to cooperate with the ORS and to comply with the law, and exercises its discretion to grant *nunc pro tunc* approval. However, the Commission cautions Blue Star that those who engage in a particular business bear the responsibility of familiarizing themselves with the applicable statutes and regulations governing the industry (S.C. Wildlife & Marine Resources Dept. v. Kunkle, 287 SC 177, 336 S.E.2d 468 (1985)), and that this Commission expects Blue Star to know the statutes, rules and regulations of the Commission and to maintain compliance with these requirements.

Mr. Kugler testified that Atkins/Masters had been offering and reasonably providing services under the Certificate for twelve months prior to the filing of the Application in this Docket. Business checking account summaries from the Bank of America demonstrating service from January, 2005 to December, 2005 were also filed with the Application. According to Mr. Kugler, Atkins/Masters has been providing services locally within Greenville County and between points and places in Greenville County and points and places in South Carolina.



Included in the Application was a certification from Richard Masters of Atkins/Masters that there were no debts and no claims against Atkins/Masters, that there were no wages due employees of Atkins/Masters, that there were no unremitted COD collections due shippers, that there were no claims against Atkins/Masters for loss of or damage to goods transported or received for transportation, that there were no claims against Atkins/Masters for overcharges on property transported or received for transportation, and that Atkins/Masters had no interline accounts due other carriers.

Mr. Kugler testified that Blue Star has sufficient insurance to meet the Commission's insurance requirements. The Application contains an insurance quote which indicates the amount of premium for liability insurance in the amount of \$2,000,000.00 and cargo insurance in the amount of \$300,000.00. Mr. Kugler also testified concerning audits performed on May 11, 2005, and May 24, 2006, by the South Carolina Office of Regulatory Staff. According to Mr. Kugler, the infractions noted in the Audits have been corrected and the recommendations communicated to the carrier by the ORS have been implemented.

Presently, Blue Star owns three trucks and leases additional trucks as needed in its business. Blue Star's trucks undergo regular U.S.D.O.T. inspections, and the driver of each truck performs a "walk around" inspection prior to each move. According to Mr. Kugler, Blue Star has plans to purchase additional trucks if the transfer of authority is approved. As set out above, Mr. Kugler testified that the company has been providing moving services on an uninterrupted basis for more than twelve months.

According to Mr. Kugler, the transfer of Certificate of PC&N No. 567-G from Mr. Masters to Blue Star is in the public interest. Mr. Kugler testified that Mr. Masters has done an excellent job as owner of Atkins/Masters and that the Transferor's business has a good reputation. The record reveals that Blue Star will utilize the tariff previously approved for Atkins/Masters. Mr. Kugler testified that Blue Star is aware of the duties imposed by the applicable statutes, regulations, and Commission rules and that Blue Star will comply with same.

Ronald Ewart also testified on behalf of Blue Star, describing the Company's warehouse and storage facilities. According to Mr. Ewart, Blue Star's business is growing, and there is a demand for Blue Star's services in Greenville County and the state.

L. George Parker, Jr. and Patty Vowell testified on behalf of the Office of Regulatory Staff. Mr. Parker testified regarding his inspection of Blue Star and testified that Blue Star's facilities and equipment are in good working condition. Mr. Parker further testified that the 2005 annual report has not been filed and is past due. Mr. Parker recommended that the 2005 annual report be filed immediately with ORS.

Ms. Vowell testified regarding the recent audits of Blue Star. Ms. Vowell testified that, while certain irregularities had been discovered, Blue Star's representatives had been concerned about, and attentive to, the problems, and had cooperated fully with Ms. Vowell's audit. Mr. Kugler testified that the irregularities discovered had been resolved and would not recur. Ms. Vowell testified that in her estimation Blue Star would continue as a compliant and cooperative entity.

**FINDINGS OF FACT**

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. Masters, as Transferor, desires to transfer its interests in the Certificate of PC&N No. 567-G.

2. Masters has found a willing transferee for Certificate of PC&N No. 567-G and that willing buyer is Blue Star, the Transferee herein.

3. The moving services offered under Certificate of PC&N No. 567-G have been continuously offered and reasonably provided to the public for at least twelve months prior to the filing of the instant Application.

4. Atkins/Masters, as Transferor, has no debts or claims against it; has no wages due employees; has no unremitted COD collections due shippers; has no claims for loss of or damage to goods transported or received for transportation; has no claims for overcharges on property transported; and has no interline accounts due other carriers.

5. Blue Star, the Transferee herein, has demonstrated that it is “fit” to provide and properly perform the moving services allowed by Certificate of PC&N No. 567-G. Blue Star has shown that its principals are familiar with, and agree to operate in compliance with, the statutes, rules, and regulations governing for hire motor carrier operations. Additionally, Atkins/Masters certified in its Application that it has no outstanding judgments pending against it.

6. Blue Star, the Transferee herein, has demonstrated that it is “able” to provide and properly perform the moving services allowed by Certificate of PC&N No.

567-G. Blue Star has demonstrated that it has the necessary equipment to provide moving services by presenting evidence of owning two trucks and leasing other trucks as needed. Further, Blue Star has provided evidence of having liability and cargo insurance that meets the Commission's insurance requirements.

7. Blue Star, as Transferee herein, has demonstrated "willingness" by filing its Application and by appearing at the hearing to answer questions regarding its operations and business. Further, the testimonies of Mr. Kugler and Mr. Ewart indicate "willingness" on behalf of Blue Star and its principals.

8. The transfer of Certificate of PC&N No. 567-G will not adversely affect the services offered to the public under that certificate.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that Blue Star has been continuously offering and reasonably providing to the public moving services under Certificate of PC&N No. 567-G for at least twelve months prior to the filing of the instant Application.

2. The Commission concludes that Blue Star has demonstrated through the Application and the testimony presented that it meets the requirements of being fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp.2005).

3. The Commission concludes that the transfer of Certificate of PC&N No. 567-G from Atkins/Masters to Blue Star, *nunc pro tunc*, will not adversely affect the service to the public under the Certificate.

4. Based on the conclusions above, that Atkins/Masters has continuously and reasonably offered the services to the public, that Blue Star has demonstrated that it meets the requirements of fit, willing, and able, and that the sale and transfer of Certificate of PC&N No. 567-G will not adversely affect the service to the public under the Certificate, the Commission concludes that Class E Certificate of PC&N No. 567-G should be transferred from Atkins/Masters to Blue Star. This grant of authority is contingent upon Blue Star's complying with all Commission regulations, and this grant of authority is not effective until such time as Blue Star comes into compliance with the Commission regulations as outlined below. The Commission further cautions Blue Star that it is responsible for knowing the statutes, rules and regulations of the Commission and for complying with these requirements. Blue Star has undertaken to provide for-hire, regulated transportation services within the State of South Carolina. Those who engage in a particular business bear the responsibility of familiarizing themselves with the applicable statutes and regulations governing the industry.

IT IS THEREFORE ORDERED THAT:

1. Class E Certificate of Public Convenience and Necessity No. 567-G issued to Atkins/Masters Moving & Storage, Inc. is hereby transferred to Blue Star International Moving & Storage, LP, on a *nunc pro tunc* basis, and therefore retroactively to Blue Star's purchase of Atkins/Masters assets on February 23, 2004, and Blue Star is hereby authorized to provide transportation services by motor vehicle as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):  
Between points and places in Greenville County, and  
between points and places in Greenville County and points  
and places in South Carolina.

2. Blue Star International Moving & Storage, LP shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission. If it has not already been filed, the 2005 annual report shall be filed within fourteen (14) days of this Order.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued to Blue Star International Moving & Storage, LP,

4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



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G. O'Neal Hamilton, Chairman

ATTEST:



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C. Robert Moseley, Vice Chairman

(SEAL)